

D-1-GN-09-004104

Filed
 09 December 3 P3:04
 Amalia Rodriguez-Mendoza
 District Clerk
 Travis District

CAUSE NO. _____

C.D. HENDERSON CONSTRUCTION
SERVICES, LTD.

IN THE DISTRICT COURT OF

Plaintiff,

V. TRAVIS COUNTY, TEXAS

SCOTTSDALE INSURANCE COMPANY,

200TH

Defendant

2015X JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW C.D. HENDERSON CONSTRUCTION SERVICES, LTD. and file this Original Petition against SCOTTSDALE INSURANCE COMPANY and would respectfully show this Court the following:

I.
DISCOVERY CONTROL PLAN

1. Discovery is intended to be conducted under Texas Rule of Civil Procedure 190.3 (Level 2).

II.
THE PARTIES

2. Plaintiff C.D. HENDERSON CONSTRUCTION SERVICES, LTD ("C.D. Henderson") is a Texas company with its principal place of business in Dallas County, Texas.

3. Defendant SCOTTSDALE INSURANCE COMPANY ("Scottsdale") is an insurance company incorporated in Ohio with its principal place of business in Ohio. Defendant Scottsdale is a commercial lines insurance company that issues policies in Texas as a non-admitted carrier through the "surplus lines" provisions of Texas law. Defendant Scottsdale can

EXHIBIT

3

tabbed



be served with a copy of this Original Petition by serving the Commissioner of Insurance, Texas Department of Insurance, 333 Guadalupe St., Austin, Texas 78701.

III.
JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction of this cause of action because it involves an amount in controversy in excess of the minimum jurisdictional limits of this Court.

5. Venue is proper in Travis County under Texas Civil Practice and Remedies Code Section 15.002(a)(1) because all or a substantial part of the events or omissions giving rise to the claim occurred within Travis County, Texas.

IV.
FACTUAL BACKGROUND

6. On or about July 19, 2005, Plaintiff C.D. Henderson filed a lawsuit against Capital Metropolitan Transportation Authority ("Capital Metro") under Cause No. GNS-02486; *C.D. Henderson Construction Services, Ltd. v. Capital Metropolitan Transportation Authority*; in the 250th Judicial District Court of Travis County, Texas (the "Underlying Lawsuit"), alleging a claim for breach of contract arising out of C.D. Henderson's construction of Capital Metro's new facility located at 9313 and 9315 Old McNeil Road, Austin, Texas 78758 (the "Project").

7. Thereafter, on or about February 26, 2007, Capital Metro filed a counterclaim against C.D. Henderson in the Underlying Lawsuit, alleging various claims for defective construction and resultant damages and delays. Capital Metro has filed several amended counterclaims since that date. Capital Metro's claims against C.D. Henderson include claims for damages arising out of the work of several of C.D. Henderson's subcontractors, including Austin Capitol Concrete, Inc.



8. Defendant Scottsdale issued a commercial general liability insurance policy to Austin Capitol Concrete, Inc., bearing policy number CLS1103598 and effective February 14, 2005 to February 14, 2006 (the "Scottsdale Policy").

9. Pursuant to C.D. Henderson's contract with Austin Capitol Concrete, the latter agreed to name C.D. Henderson as an additional insured under its commercial general liability policies, including, but not limited to, the Scottsdale Policy.

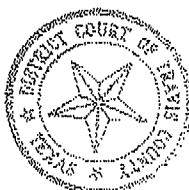
10. Accordingly, C.D. Henderson tendered the Capital Metro claims to Defendant Scottsdale and requested a defense and indemnity. C.D. Henderson also tendered the claims to other carriers for Austin Capitol Concrete, as well as to the carriers for C.D. Henderson's other subcontractors on the Project.

11. On or about March 31, 2009, Scottsdale issued a letter to C.D. Henderson in which it agreed to defend C.D. Henderson in the Underlying Lawsuit pursuant to a reservation of rights. Scottsdale requested that C.D. Henderson provide it with contact information for any other carriers that had agreed to provide a defense to C.D. Henderson so that the various carriers could coordinate the defense. On several occasions following receipt of Scottsdale's March 31, 2009 letter, C.D. Henderson provided Scottsdale with the information necessary for that coordination of the defense.

12. Nevertheless, to date, despite repeated requests by C.D. Henderson and repeated promises from Scottsdale, Scottsdale has not contributed at all to C.D. Henderson's defense in the Underlying Lawsuit.

V.
CAUSES OF ACTION

13. Each of the foregoing paragraphs is incorporated by reference in the following causes of action as though fully set forth herein.



A. DECLARATORY JUDGMENT

14. An actual controversy exists between C.D. Henderson on one hand, and Scottsdale on the other hand, as to the scope of coverage provided to C.D. Henderson via the terms and conditions of the Scottsdale Policy.

15. Pursuant to the Texas Declaratory Judgment Act, C.D. Henderson seeks a declaration that Scottsdale owes a defense to C.D. Henderson in connection with the Underlying Lawsuit.

B. BREACH OF CONTRACT

16. The Scottsdale Policy sets forth contractual obligations on the part of Scottsdale to defend and indemnify its insureds, including additional insureds like C.D. Henderson, when claims are made against the insureds for property damage caused by an occurrence and where no exclusions operate to bar all coverage under the Scottsdale Policy.

17. Scottsdale has breached the Scottsdale Policy by failing to defend C.D. Henderson against the claims of Capital Metro in the Underlying Lawsuit.

C. PROMPT PAYMENT OF CLAIMS ACT

18. The failure of Scottsdale to promptly pay C.D. Henderson's defense costs after establishing that it was reasonably clear that coverage exists constitutes a violation of Article 542.051 *et seq.* of the Texas Insurance Code.

19. C.D. Henderson, therefore, in addition to its claim for damages, is entitled to an 18% penalty and attorneys' fees as set forth in Section 542.060 of the Texas Insurance Code.



D. ATTORNEYS' FEES

20. C.D. Henderson has engaged the undersigned attorneys to prosecute this lawsuit against Scottsdale and has agreed to pay reasonable attorneys' fees and expenses through trial and any appeal.

21. C.D. Henderson prays that it be awarded all reasonable attorneys' fees incurred in prosecuting the aforementioned causes of action through trial and any appeal pursuant to Section 38.001 of the Texas Civil Practices and Remedies Code. In addition and/or in the alternative, C.D. Henderson may be awarded attorneys' fees under the Texas Insurance Code.

**VI.
CONDITIONS PRECEDENT**

22. All conditions precedent to C.D. Henderson's right to recover under the Scottsdale Policy at issue have occurred or have been fully performed.

**VII.
PRAYER**

WHEREFORE, PREMISES CONSIDERED, C.D. Henderson Construction Services, Ltd. prays that, upon final hearing of the case, this Court declare and adjudge the contractual obligations of Scottsdale Insurance Company, that this Court declare and adjudge that C.D. Henderson recover all damages from and against Scottsdale that they may reasonably establish by a preponderance of the evidence, and that this Court award attorneys' fees through trial and any appeal, costs of court, pre-judgment interest, post-judgment interest, and such other and further relief, general or special, at law or in equity, to which C.D. Henderson may show itself to be justly entitled.



Respectfully submitted,

VISSER SHIDLOFSKY LLP

By /s/ Lee H. Shidlofsky

Lee H. Shidlofsky
State Bar No. 24002937
Douglas P. Skelley
State Bar No. 24056335
7200 N. MoPac Expressway, Suite 430
Austin, Texas 78731
Telephone: (512) 795-0600
Telecopier: (866) 232-8709
E-mail: lee@vysfirm.com
E-mail: doug@vysfirm.com

ATTORNEYS FOR PLAINTIFFS

I, ANALIA RODRIGUEZ-MENDOZA, District Clerk,
Travis County, Texas, do hereby certify that this is
a true and correct copy as same appears of
record in my office. Witness my hand and seal of
office on 4-9-10.

ANALIA RODRIGUEZ-MENDOZA



DISTRICT CLERK

By Deputy: *[Signature]*



LHB/rv/kc
88

CITATION
THE STATE OF TEXAS
CAUSE NO. D-1-GN-09-004104

C.D. HENDERSON CONSTRUCTION SERVICES, LTD.,

vs.
SCOTTSDALE INSURANCE COMPANY

Plaintiff

Defendant

TO: SCOTTSDALE INSURANCE COMPANY
BY SERVING THE COMMISSIONER OF INSURANCE
313 GUADALUPE ST.
AUSTIN, TEXAS 78701

Defendant, in the above styled and numbered cause;

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the PLAINTIFF'S ORIGINAL PETITION of the PLAINTIFF in the above styled and numbered cause, which was filed on DECEMBER 3, 2009 in the 280TH JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, December 07, 2009.

REQUESTED BY:
LEE HOWARD SHISLOFSKY
GREYSTONE PLAZA
7200 NORTH MOPAC EXPRESSWAY, SUITE 430
AUSTIN, TX 78731
BUSINESS PHONE: (512) 795-0600 FAX: (866) 232-8709



AMALIA RODRIGUEZ-MENDOZA
Travis County District Clerk
Travis County Courthouse
1000 Guadalupe, P.O. Box 679003 (78767)
Austin, TX 78701

--- RETURN ---
Date to hand on the _____ day of _____, at _____ o'clock _____ M., and executed at _____
Within the County of _____ on the _____ day of _____, at _____ o'clock _____ M., by delivering to the within named
Person, a true copy of this citation together with the E-FILE MANDATE NOTICE accompanying pleading, having first
attached such copy or such citation to such copy of pleading and whereupon no such copy of citation the date of
delivery.



Bruce Elfant
Constable Pct. 5
Travis County, Texas

Service Fee: \$ _____
Should be and is subscribed before me this the _____ day of _____, 2009.

By: _____
Printed Name of Server: _____

NOTARY PUBLIC, THE STATE OF TEXAS

RECEIVED

County, Texas

D-1-GN-09-004104

Original

Service Copy

CONSTABLE
2009 DEC -8 AM 8:04

POL # 00953

CONSTABLE PRECINCT 5
TRAVIS COUNTY, TEXAS



Cause No. D1GN09004104

{}

In the 200 District Court
TRAVIS County

Plaintiff:

{}

C D HENDERSON CONSTRUCTION
SERVICES LTD

Defendant:

SCOTTSDALE INSURANCE
COMPANY

Officer's Return

Came to hand December 08, 2009 at 8:04 A.M. and executed in Travis County, Texas, on December 10, 2009 at 4:12 P.M. by delivering to SCOTTSDALE INSURANCE COMPANY by delivering to MIKE GEESLIN, Commissioner of Insurance, at 333 Guadalupe, Austin, Texas, 78701, by delivering to GINGER YOCOM, designated agent for service for the Commissioner of Insurance, duplicate true copies of the citation together with accompanying duplicate copies of the Plaintiff's ORIGINAL petition WITH E-FILE MANDATE NOTICE.

FEE: \$ 70 Paid

Bruce Elfant,
Travis County Constable Precinct 5
Travis County, Texas

by: _____

Miracle Mount, Deputy





Bruce Elfant, Constable
Travis County Constable Precinct 5
1003 Guadalupe
Austin, Texas 78701
December 15, 2009

SHIDLOFSKY,LEE H
7200 N MOPAC EXPWY STE 430
AUSTIN, TX 78731

INVOICE

Cause Nbr	D1GN09004104-1
Plaintiff	C D HENDERSON CONSTRUCTION SER
Service Name	SCOTTSDALE INSURANCE COMPANY
Service Fee	70.00
Payment Received	70.00
Balance Due	0.00

Thank you for allowing us to be of service to you in this case.

I, AMALIA RODRIGUEZ-MENDOZA, District Clerk,
Travis County, Texas, do hereby certify that this is
a true and correct copy as same appears of
records in my office. Witness my hand and seal of
office on 4-9-10,
AMALIA RODRIGUEZ-MENDOZA



DISTRICT CLERK

By Deputy: *Jewi J. M.*

Check the status of your civil process at
www.Constable5.com
Be sure to bookmark the ServiceCheck page



2/24/2010

TEXAS DEPARTMENT OF INSURANCE

Filed in The District Court
of Travis County, Texas

FEB 22 2010 MT

At 10:16 a.m.
Amalia Rodriguez-Mendoza, Clerk

On December 10, 2009, the Commissioner of Insurance of the State of Texas, pursuant to TEX. INS. CODE ANN., Chapter 804, received a citation and Plaintiff's Original Petition, for service on Scottsdale Insurance Company; in Cause No. D-1-GN-09-004104; styled *C.D. Henderson Construction Services, Ltd. vs. Scottsdale Insurance Company*, in the 200th Judicial District Court of Travis County, Texas.

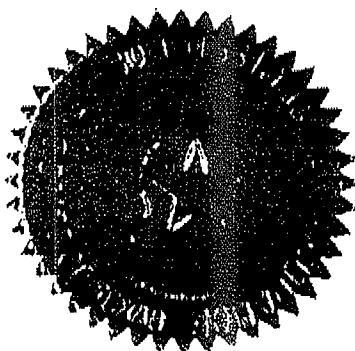
THIS IS TO FURTHER CERTIFY THAT on December 18, 2009, the above captioned documents were forwarded to Scottsdale Insurance Company; Attention: R. Lindsey McCulchan, Vice President-Legal & Asst. Secretary, at 8877 N. Gainey Center Drive, Scottsdale, AZ 85258, by certified mail, return receipt requested. The return receipt, No. 7009 1680 0000 8558 0210, was not returned to this office but the United States Postal Service website indicates the date of delivery was December 22, 2009.

IN TESTIMONY WHEREOF, WITNESS MY HAND
AND SEAL OF OFFICE AT AUSTIN, TEXAS,

THIS 17th DAY OF FEBRUARY, 2010

MIKE GEESLIN
COMMISSIONER OF INSURANCE

BY Cynthia Villarreal-Reyna
CYNTHIA VILLARREAL-REYNA
CHIEF, AGENCY COUNSEL SECTION
LEGAL & REGULATORY AFFAIRS



001385241



2/24/2010

USPS - Track & Confirm

Page 1 of 1



Home | Help

Track & Confirm

Track & Confirm

Search Results

Label/Receipt Number: 7009 1680 0000 8558 0210
 Service: Certified Mail™
 Status: Delivered

Your item was delivered at 7:57 AM on December 22, 2009 in
 SCOTTSDALE, AZ 85261.

Track & Confirm

Enter Label/Receipt Number:

Detailed Results:

- » Delivered, December 22, 2009, 7:57 am, SCOTTSDALE, AZ 85261
- » Notice Left, December 21, 2009, 10:30 am, SCOTTSDALE, AZ 85256

Notification Options

Track & Confirm by email

Our current email information or updates for your item sent to you or others by email. (See.)

[Site Map](#) [Customer Service](#) [FAQs](#) [Mail Services](#) [Careers](#) [Privacy Policy](#) [Terms of Use](#) [Business Customer Order](#)

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Texas Department of Insurance
 Legal & Regulatory Affairs, Mail Code 110-1A
 131 Guadalupe • P. O. Box 149106, Austin, Texas 78714-9106

December 17, 2009

Certified Mail No. 7009 1680 0000 8558 0210
 Return Receipt Requested

Scottsdale Insurance Company
 Attn: R. Lindsay McCutchen
 Vice-Pres.-Legal & Asst. Secretary
 8877 N. Gainey Center Drive
 Scottsdale, AZ 85258

RE: Cause No. D-1-GN-09-004104; C.D. Henderson Construction Services, Ltd. vs. Scottsdale Insurance Company; In the 200th Judicial District Court of Travis County, Texas

Greetings.

Service of Process has been requested through the Commissioner of Insurance. Enclosed is a citation and Plaintiff's Original Petition, in the above-referenced matter. These documents were served upon the Commissioner of Insurance on December 10, 2009.

Sincerely,

Elizabeth C. Lara, Legal Assistant
 Agency Counsel Section
 Legal & Regulatory Affairs
 (512) 463-6380

Enclosures

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only - No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

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3/24/2010



Texas Department of Insurance

Legal & Regulatory Affairs, Mail Code 110-1A
 333 Guadalupe • P. O. Box 149104, Austin, Texas 78714-0104
 512-475-1821 telephone • www.tdi.state.tx.us

February 18, 2010

Lee H. Shidlofsky
 Visser Shidlofsky, L.L.P.
 7200 N. MoPac Expressway, Ste. 430
 Austin, TX 78731

RE: Cause No. D-1-GN-09-004104; *C.D. Henderson Construction Services, Ltd. vs. Scottsdale Insurance Company*; In the 200th Judicial District Court of Travis County, Texas

Greetings:

Enclosed please find a certificate of service and a copy of the returned certified mail, green card, in regard to the above-captioned case.

If you have any questions, or need any further assistance, please do not hesitate to contact our office.

Sincerely,

Elizabeth C. Lara, Legal Assistant
 Agency Counsel Section
 Legal & Regulatory Affairs
 (512) 463-6390

Enclosure

cc: District Clerk
 Travis County
 P.O. Box 679003
 Austin, TX 78767

ANALIA RODRIGUEZ-MENDOZA, District Clerk,
 Travis County, Texas, do hereby certify that there is
 a true and correct copy of some papers of
 record in my office. Witness my hand and seal of
 this 20th day of March, 2010.



DISTRICT CLERK
 By Deputy: *Juli Gray*

